

TESTIMONY OF JOHN CONDAYAN

MARCH 30, 1988 - 2:00 P.M.

SUBCOMMITTEE ON INTERNATIONAL OPERATIONS

COMMITTEE ON FOREIGN AFFAIRS

Mr. Chairman, I am also pleased to have the opportunity today to complement Amb. Roosevelt's statement before the Subcommittee on International Operations and to address the role of the Office of Foreign Missions, our policies, the concerns of Congress, our experience, and to provide additional comments on H.R. 3036.

The Role of the Office of Foreign Missions

The role of the Office of Foreign Missions, as conceived by Congress, is to exercise control and management of the permissible scope of the activities of Foreign Missions, their staffs and family members in the United States. We do this by several means, one of which is by co-chairing the Accreditation Review Panel, a body which reviews and establishes Department policy on the accreditation of foreign government personnel and the opening and closing of certain foreign government offices. The Panel also discusses cases concerning foreign mission personnel involved in serious allegations of criminal or civil misconduct. In this process we work with other Panel members

- 4 -

in formulating and defining the Department's policies and practices in dealing with such issues. As envisioned by Congress, we act as an independent office, concerned with the treatment to be accorded to a foreign mission in the United States after due consideration of the benefits, privileges, and immunities provided to our missions abroad. In addition, we, along with the Office of Protocol, are concerned with protecting the safety and the security of U.S. Citizens from diplomatic abuses, and more specifically the victims or injured parties of an abuse of diplomatic immunities or privileges. It is our role to balance the legal, foreign policy, political or other conflicting issues with the interests of the injured party.

In addition to our participation in the accreditation policy and process, we have specific responsibility for the management of the Department's diplomatic vehicle and the customs programs, which are addressed in this Bill.

The motor vehicle program, controls the registration, sale, and export of diplomatic vehicles owned or operated by Foreign Missions and their personnel, enforces liability insurance requirements for vehicles, licenses and monitors driving records and violations of Foreign Mission personnel. The four functions interact as one unit.

- 5 -

### Policies

Our policies governing this program are clearly stated and communicated to the Foreign Missions. We do not tolerate abuses of privileges or immunities, and especially those dealing with abuses of immunities as they pertain to the operation of motor vehicles.

We require that all vehicles operated by Foreign Missions or accredited staffs be registered under the Department's program.

We require each vehicle to be insured for a minimum of \$300,000 combined single limit or \$100,000/300,000 liability coverage, and \$100,000 property damage.

By January 1989, all accredited Foreign Mission personnel will be licensed for the operation of vehicles, by the Department of State. Applicants holding a license issued based on standards equivalent to those in the U.S. will obtain our driver's licenses by satisfying only a vision test. Those who do not hold a license, or those who hold a license but do not meet our standards, must submit to a driver's examination conducted by local authorities in their State of residence.

- 6 -

In addition to control of initial licensing, OFM monitors the driving records of Foreign Mission Personnel. In consultation with various professional organizations dealing with motor vehicle programs, including the American Association of Motor Vehicle Administrators and the Insurance Industry's Committee on Motor Vehicle Administration. We have created an electronic data bank to record driving history and violations of each of the licensed operators. Each infraction or violation is assigned a point value (comparable, yet more stringent in its application and enforcement than the point systems used by the majority of the States) for entry into our electronic file. Accumulation of excessive points (twelve points) within a 24 month period results in suspension of driving privileges. Driving under the influence of alcohol or reckless driving results in the immediate suspension or permanent revocation of an individual's driving license and privileges. These driving records are available to the insurance companies and shortly will be accessible to law enforcement agencies through the National Law Enforcement Telecommunications System (NLETS), via the Treasury Enforcement Communications System.

Pursuant to the FY-88-89 Foreign Relations Authorization Act, the Department recently submitted to you a study prepared by a panel of insurance industry officials and experts, which considered the adequacy of the currently required automobile

- 7 -

liability insurance, and examined the feasibility of increasing current minimum limits. The experts concluded, on the basis of independent actuarial data, as well as individual analysis of available industry-wide loss data, that our current minimum liability insurance requirements are adequate. They projected that over 99% of all auto claims will fall within the current limits required. They also noted the limit on liability insurance imposed by the Department is well above the limit most Americans carry voluntarily and above the minimum requirement of individual States. In this context we must remember that it is extremely difficult to create a no-risk environment.

Lastly, our policy on parking and moving violations has been clearly stated to the diplomatic community. While we recognize that there may be some extenuating special circumstances, we insist that parking violators pay their fines. In Chicago, for example we have worked with city enforcement officials to establish procedures by which the Chicago police no longer dismiss either parking or moving violations submitted by Foreign Consular Officials and their dependents. All moving violations submitted to the city are returned with instructions to comply with the provisions of the citation. With a few exceptions, the same applies to parking violations. As a result of these new policies, the number of unpaid violations have dramatically declined.

- 8 -

Provisions of H.R. 3036

Ambassador Roosevelt has already commented on several provisions of H.R. 3036. There are a few other provisions that I would like to address briefly. I will begin with Section 8, which would require the Department to raise minimum liability insurance for foreign missions and their personnel to \$1,000,000. This issue was addressed in our report submitted to Congress pursuant to the FY-88-89 Authorization Act. On the basis of our study, we are confident that the existing insurance limits can reasonably be expected to afford adequate compensation for injury to persons or property resulting from or arising out of automobile accidents. The Department recommends that the present levels be maintained and periodically reviewed for adequacy.

As I indicated earlier, OFM now requires automobile insurance with minimum \$100,000/\$300,000/\$100,000 coverage. The Committee has before it the results of the study of automobile insurance that the Department completed in accordance with the 1988/89 Authorization Act. That study concluded that existing coverage limits are adequate, and that an increase in minimum coverage to \$1,000,000 would require a substantial increase in premiums, and would lead to the unavailability of insurance for some foreign mission personnel. If enacted, the section could have serious and

- 9 -

harmful reciprocity effects on U.S. personnel abroad. Governments whose missions are effectively precluded from driving in the United States would be likely to impose the same restrictions on U.S. personnel. The overseas operations of the many U.S. agencies that operate at our embassies and consulates could be paralyzed.

I would like to turn now to Section 9, which would require OFM to establish "liability insurance requirements" for foreign missions to cover risks other than those associated with automobiles.

The Department's understanding is that this provision was intended to require insurance to compensate victims of crimes committed by individuals who cannot be sued in our courts because of their immunity. The Department is not aware that any such insurance exists. The outside experts who prepared the study of insurance required by the Authorization Act concluded that this type of catastrophic insurance may not be readily available. They state in their report that the only major type of insurance that covers losses arises out of criminal activity relates to money and securities, which is known as "crime insurance". This is first party coverage, which does not extend to third party victims and which is underwritten under strict guidelines.

- 10 -

Apart from criminal activity, there may be instances in which U.S. citizens seek compensation from foreign missions and their personnel for negligent acts. A mission itself, unlike its personnel, is not governed by diplomatic immunity. Thus, a mission may be sued for negligence under the Foreign Sovereign Immunities Act. In such a case, it would be up to the courts to determine whether or not the doctrine of sovereign immunity barred the suit.

Finally, I would like to comment briefly on Section 10, which urges the President to review the treatment of diplomatic pouches and to seek in every appropriate forum the adoption of measures that ensure that pouches are not used to smuggle drugs, narcotics, and materials to foster terrorism.

The Department and other parts of the Executive Branch have recently been involved in a thorough review of U.S. policies and international laws with respect to the pouch as part of our consideration of the UN's International Law Commission draft convention on the pouch. In this assessment, the United States must weigh its competing interests as both the largest sender and largest recipient of diplomatic pouches. On balance, we have concluded that our interest as a sender requires that we seek, to the maximum extent possible, to preserve the integrity of the pouch. Such integrity is protected by present law, Article 27 of the Vienna Convention on Diplomatic Relations,



- 11 -

which provides that diplomatic pouches may not be opened or detained. We believe that U.S. interests are best served by preservation of that regime.

While there have been instances of abuse of the inviolability of the pouch, it has been our experience that such abuses for the illicit transportation of narcotics, explosives, or weapons are relatively rare compared to the reasonable and proper uses routinely made of the bag. Moreover, the existing general procedures used by foreign and domestic authorities for detection of the entry of such items are sufficient to discourage abuses. In recent years, there have been proposals to change the existing regime regarding the pouch to permit under a variety of circumstances the examination of the pouch by X-ray or other means. As the largest sender of diplomatic pouches, the United States has traditionally been of the view that the inviolability of the pouch must be maintained and we have resisted such changes in the current regime. The diplomatic pouch is utilized to send classified and sensitive documents and articles, including communications and ciphering equipment, which is vital to the operations of our missions abroad and the accomplishment of our foreign policy and national security objectives. Any provisions which would allow scanning of the bag risks compromising the confidentiality of sensitive communications equipment and other contents of the bag.

- 12 -

We are pleased that Congress has shared our interest in these issues and we welcome your efforts to help us. I shall be happy to answer any questions, Mr. Chairman.

March 28, 1988